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SPECIAL JOINT COMMITTEE OF THE SENATE  
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

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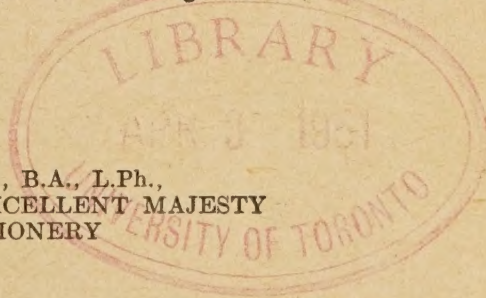
WEDNESDAY, MAY 19, 1948

WITNESS:


Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

OTTAWA  
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,  
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
CONTROLLER OF STATIONERY

1948







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## MINUTES OF PROCEEDINGS

WEDNESDAY, 19th May, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met at 4.00 o'clock p.m. The Joint Chairman, Right Honourable J. L. Ilsley, presided.

*Also present:*

*The Senate:* Honourable Senator Wilson.

*The House of Commons:* Messrs. Beaudoin, Breithaupt, Cournoyer, Dechene, Hansell, Hazen, Herridge, LaCroix, Marier, Marquis, Miller, Probe, Robinson (*Simcoe East*), Smith (*York North*), Whitman, Zaplitny.

Copies of the following were filed with the committee:

1. File No. 32, Comments from the United Kingdom and South Africa on the Draft International Declaration on Human Rights, E/CN.4/82/Add.4, 27th April, 1948.

2. File No. 33, Comments from Norway on the Draft Declaration on Human Rights, E/CN.4/82/Add. 5, 30th April, 1948.

3. File No. 34, Comments from Egypt on the Draft Declaration on Human Rights, E/CN.4/82/Add.6, 1st May, 1948.

4. File No. 35, Comments from India on the Draft Declaration on Human Rights, E/CN.4/82/Add.7, 4th May, 1948.

5. File No. 36, Comments from United Kingdom on Draft Declaration on Human Rights, E/CN.4/82/Add.9, 10th May, 1948.

The committee resumed consideration of the Draft International Declaration on Human Rights.

Articles 4 to 10 were reviewed.

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa, was called. He made a statement summarizing comments of member governments, United Nations, relative to the draft declaration, and was questioned.

The witness was retired.

The committee adjourned at 6.00 o'clock p.m., to meet again at the call of the Chair.

J. G. DUBROY,  
*Clerk of the committee.*







## MINUTES OF EVIDENCE

HOUSE OF COMMONS,

May 19, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 4.00 p.m. The Right Honourable Mr. J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: We were on article 4 of the declaration. I think Mr. Henry had some documents or communications that he would like to mention to the committee.

### **D. H. W. Henry, Counsel, Department of Justice, recalled.**

The WITNESS: Mr. Chairman, since the last meeting comments have been received from the United States and the United Kingdom which we did not have the benefit of before. With respect to article 4, as I assume it is most convenient to bring the comments of these governments in the appropriate place, both these governments suggest no change be made in the draft as it is now before this committee. That would indicate that the present form is satisfactory to both those governments.

*By Mr. Hazen:*

Q. The United States and who else?—A. The United States and the United Kingdom.

*By Mr. Hansell:*

Q. Is that in respect of the entire draft or just article 4?—A. No, sir, that is with respect to that particular article. We now have detailed comments on most of the articles in the document from those two governments. There is a further source of information which possibly should be placed before you. At Lake Success the drafting committee has been meeting during the past two weeks or more, and has now taken up discussion of the draft declaration. The first report we have of that discussion deals with article 4 with which apparently the proceedings opened.

In respect to this article Mrs. Roosevelt, the chairman, suggested that the substantive rights should be expressed under an over-all clause commencing, "every one is entitled to". That suggestion was made here last day and seems to be the stand taken by the United States that there should be a definite assertion that every person is entitled to certain rights, and that under that formula the specific designation of the rights should follow.

The representative of China stated that he supported that suggestion and added that there was a Chinese draft declaration available which might be taken into consideration in that respect. Mr. Chairman, I am afraid we have not received the Chinese draft, but I understand it is a very worthy document, and has received favourable comment from the United States government.

After discussion the proposals to include the following phrases—and I will quote the phrases—"from the moment of conception", which it was suggested be inserted, and the phrase "regardless of physical or mental condition", and the phrase "to live in dignity and to develop one's personality adequately",



and the phrase "and persons unable to maintain themselves shall have the right to aid and protection", were all voted upon and rejected. The original wording of article 4 was accordingly adopted, and therefore as approved by the drafting committee reads:

"Every one has the right to life, to liberty and security of person."

Mr. Chairman, I think that brings the committee up to date.

The CHAIRMAN: Is there any further discussion of this article?

*By Mr. Hazen:*

Q. Has a person the right to the pursuit of happiness?

Mr. HERRIDGE: That is an academic aspect of it.

Mr. MARQUIS: It was in the Declaration of Independence.

Mr. HAZEN: I have in mind the wording of the American Declaration of Independence, "every one has the right to life, liberty and the pursuit of happiness". Were the words "pursuit of happiness" considered by this committee which drafted this international declaration on human rights? Was there any discussion over those words, and if so, what was it?

The WITNESS: I am not aware there was.

Mr. HAZEN: I am surprised there should not be because they must have had before them the American Declaration of Independence, and those are the words that were in it. One might almost think that the representatives of the United States on that committee would rather have favoured those words. If they have not there may be some explanation.

*By the Chairman:*

Q. You do not know of any discussion of that phrase?—A. No, I am not aware of any discussion. It would appear in committee document 18 if there were a discussion, and I do not see it opposite article 4 in the comments. I might also point out in the analogous article of the suggested declaration put forward by the United States that phrase did not appear in the first article which says, "every one is entitled to life, liberty, and equal protection under law". I think if it had been seriously urged the United States would probably have put it forward as a suggested form of draft.

*By Mr. Marquis:*

Q. It is probable they had attained that goal at that time, the pursuit of happiness, and did not include that.—A. Yes. There is also this possible explanation, that it is an extremely wide phrase, and possibly is a natural corollary of the other rights having been guaranteed which are mentioned in the covenant, so that you do not need to expressly state it.

*By the Chairman:*

Q. If you have liberty you can pursue happiness.—A. I think that is the suggestion, at any rate.

*By Mr. Hansell:*

Q. Are we to understand that security of person applies essentially to the body, a person's body? We are splitting hairs here again, but is there any element of economic security in that? Is that what it means, or could it mean that?

The CHAIRMAN: I would think not, myself; I do not think this means economic security at all. Would you think so?



The WITNESS: I would not think so. There are a number of articles later which specifically deal with economic security, and I do not think it was intended to include it here.

*By Mr. Marquis:*

Q. It concerns only the individual?—A. That is right.

Mr. HANSELL: Well, I think economic security concerns the individual. I do not quite get the meaning of the phrase, "security of person."

*By Mr. Whitman:*

Q. Does that mean security from arrest or from imprisonment without trial? Would that be what is suggested there?

The CHAIRMAN: Was there any discussion of the phrase, "security of person"? Bodily integrity was used by one of the other states.

Mr. MARQUIS: There was a comment—I think from the Netherlands—suggesting that some other words be used.

Mr. HANSELL: Bodily integrity means more to me than security of person.

The WITNESS: It is correct that the government of the Netherlands suggested that that phrase was too vague, and that it should be taken out and some other more concise and clear phrase expressed.

*By the Chairman:*

Q. It is supposed to be a safeguard against arbitrary arrest and detention, is it not?—A. Yes, I think that is correct. I submit that it is a well recognized type of phrase for a country such as ours where we are familiar with the provisions against arbitrary arrest and where we are familiar with the provisions which provide habeas corpus proceedings for any person who is arbitrarily arrested.

*By Mr. Hansell:*

Q. That is the term that is used in that connection?—A. Yes. It could go much wider than that though because I would suggest bodily security also means freedom from having your person violated at the hands of others, but there again in Canada we have laws which provide some sort of recourse to the individual if his person is in any way violated, either by the state or by individuals.

The CHAIRMAN: Is there any further discussion on article 4? It is interesting that they agreed on that article in the committee. If there is no further discussion we will take article 5.

No one shall be deprived of his personal liberty or kept in custody except in cases prescribed by law and after due process. Every one placed under arrest or detention shall have the right to immediate judicial determination of the legality of any detention to which he may be subject and to trial within a reasonable time or to release.

What are the comments of other states on that article?

The WITNESS: Mexico has suggested that the following wording be added, "No one may be imprisoned for purely civil debts." The government of Brazil makes its comment by reference to article 9 of the covenant which provides in detail for cases in which detention or arrest may be effected. That government considers that the necessity for including such exceptions indicates article 5 of the declaration should not be drafted in terms as broad as those suggested. It is suggested that the words "by due process" be substituted for "after due process."



The comment received from the United Kingdom indicates that if article 4 is accepted then article 5 seems to be unnecessary. The United States has forwarded a revised draft of article 5 which reads as follows:

Every one is entitled to freedom from being arrested or detained without being promptly informed of the reasons for the arrest or detention, and without being entitled to a fair hearing within a reasonable time, or release.

Mr. HERRIDGE: That language is not nearly as good as in the article here. I think it is better stated in article 5.

Mr. MARQUIS: I do not know what point there is in having the words "after due process", when it is laid down that no one shall be kept in custody except in cases prescribed by law. If the law prescribes what is to be done when somebody is arrested it does not seem to me that in a declaration such as this the words "after due process" should be used. It is an addition to the principle involved in the words, "except in cases prescribed by law." If you follow the law you will have to take some process in order to apply the law.

Mr. MARIER: You mean those words would be useless?

Mr. MARQUIS: I think so. It seems to be a catch. What kind of process is to be used when somebody is arrested? When we have somebody arrested we have the Criminal Code. We lodge a complaint against an individual, and a judge decides if he is to be kept in custody for major reasons or if he should be bailed.

The CHAIRMAN: I think the draftsman has in mind the distinction between law and procedure.

Mr. MARQUIS: Probably.

The CHAIRMAN: And that not only must there be a law ante-dating the arrest and authorizing the arrest, but that certain procedure must be followed, too. There must be due process. Of course, the Criminal Code says there may be arrest without warrant in criminal cases. I do not know how those sections would be harmonized with the requirement that there must be due process.

*By Mr. Whitman:*

Q. Was there any other criticism from any other European nation?—

A. Those are the only comments which have been forwarded by the governments, but there have been—

Q. I was thinking about political prisoners, people who have been arrested for political offences. Where would they come in? Would the words "except in cases prescribed by law" allow Russia to carry out the arrest and detention of political prisoners on a political charge which we would not consider in this country at all.—A. That may be included—I am not sure it is—in the words "after due process". In the United States the Supreme Court has had occasion to give a great deal of attention to the due process clause in the American Bill of Rights and in the 14th Amendment, and it has been pretty well concluded now, I think, that due process, whether it is in legislation or in the actual execution of laws, means upon proper legal principles and not arbitrarily. The suggestion the chairman has just made that there can be arrest without warrant in certain cases is perhaps merely the first step because a person arrested without warrant would still have his rights of habeas corpus.

*By Mr. Probe:*

Q. You could not detain him?—A. You could not detain him without giving him the reason why he had been arrested.

Mr. MARQUIS: If we refer to the French version we see it is exactly as the chairman has said. It is "selon les formes legales prescrites", legally prescribed



procedure. I should like to know if this section prevents countries from adopting some new procedure, if this clause can be voided, if a country has only to adopt some procedure under which it could decide that it might arrest somebody and keep him in custody and have him cross-examined by the chief of police, and so on. I think that nobody could object to that.

Mr. MARIER: This article does not prevent any country from using the actual law.

Mr. MARQUIS: It does not mean the law as it existed at the time of the adoption of the clause.

The CHAIRMAN: Oh, no.

The WITNESS: No, sir. In fact, I think if you look at article 32 you will find that that requires the law in the state to be in conformity with the purposes and principles embodied in the charter. Article 33 which follows it indicates that the declaration is not intended to permit anything which would destroy rights and freedoms.

*By Mr. Marquis:*

Q. So that the law that might be adopted should be in accordance with the general principles indicated in the declaration?—A. That is what is apparently intended, sir.

*By Mr. Whitman:*

Q. In other words, you mean we will have a uniform law throughout the world which will prescribe whether or not a man can be arrested and detained.—A. I should not think that would be the result because it would be practically impossible owing to the fact you have a difference first of all in the ideological outlook on the part of various states.

*By Mr. Marier:*

Q. The procedure can be different in every country?—A. That is right, and it would depend upon the organization of the state how the procedure would be laid out, but I think article 5 is intended to avoid arbitrary laws not based upon some reasonable principles of justice. I think that must be read into it. The question of political prisoners was raised a few minutes ago. That is a question which, it seems to me, depends upon the outlook of the nation concerned. Some nations may consider, for instance, that one political party should be outlawed, and any person belonging to that party found guilty of an offence, and possibly imprisoned or otherwise punished. It seems to me that would be a question for the General Assembly to consider at some point as to whether in the view of the nations as a whole, each acting on its own subjective concept of what is right, that type of law is not within the limits of the declaration.

*By Mr. Marquis:*

Q. Mr. Henry, do you not think article 3 covers that point, and that you cannot outlaw any political party because we must respect freedom of opinion?—We have discussed that article, and it was argued the other day that in some cases it might be said the opinion of a party goes beyond mere opinion, and strikes at the roots of the state. I am merely putting forward the argument that some suggest. I do not say that I recognize it, but that can be argued.

*By Mr. Robinson:*

Q. Would that first sentence of article 5 not be clarified if it read "No one shall be deprived of his personal liberty except in cases prescribed by law, or kept in custody except after due process"? I was thinking particularly in



our law of the arrest of someone after close pursuit. He could be arrested, and that would be prescribed by law, but then he could not be kept in custody except after a charge had been laid. That would be due process.

Mr. MARIER: It is important also to mention when he is arrested he is arrested according to the form prescribed by law.

Mr. HANSELL: Would there not be cases where that is not so? For instance, could a government, even our own government, proceed to arrest people apart from the law? I have reference to the recent espionage investigation.

Mr. MARQUIS: There was a law; there was an order in council providing for that. It was based on the law.

Mr. HANSELL: That is it.

Mr. MARQUIS: There should always be a law under which we proceed. We cannot have somebody arrested without any legal provision.

Mr. HANSELL: Could this be interpreted as outlawing an order in council?

Mr. MARQUIS: If an order in council is adopted under the law it is embodied in the law.

Mr. WHITMAN: Would it be impossible for a government to act as our government acted in the recent espionage cases?

Mr. MARQUIS: I do not think so. If there is a general law authorizing the government to adopt an order in council the order in council is a part of the law, and the arrest is made under the law.

The CHAIRMAN: First let us take Mr. Robinson's suggestion. I think that should be examined to see whether that would not be an improvement. It is hard to form a judgment on it as to whether or not it would be. With regard to the article as a whole in reading it I immediately thought of the espionage cases. I should think, having in mind the second sentence, that the procedure followed there would perhaps be inconsistent with this article, were it not for article 33. Article 33 says:

Nothing in this declaration shall be considered to recognize the right of any state or person to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

Possibly that might put a different complexion on it.

Mr. MARQUIS: Article 33 gives the right to have these persons arrested, but according to article 5 the individual shall be brought immediately before a court. Therefore it would be impossible for the government to have an investigation made, pending the individual being brought before the court, in order to protect the state, and to prevent these people from maintaining their ring of espionage.

The CHAIRMAN: Yes. Then the question arises about the defence of Canada regulations, the internment of so many persons in camps, who were not given a trial. There was an investigation that took place but it was not a trial in the ordinary sense of the term. Is there not some article in this declaration that provides that in a war, for example, or in a state of emergency that the state has the right to shut people up for quite a while without a trial?

The WITNESS: No, sir, not in the declaration. I think that appears in the covenant at article 4, but for some reason it has not been carried into the declaration. Yes, it is article 4 of the covenant on page 25 of committee document 18. I suggest the reason it was not carried into the declaration is that the declaration is after all an expression of general ideals, and that there must be implied in it certain derogations from at least the absolute nature of the ideals laid down. Therefore it would seem that it was not intended to put in the covenant any limitation provision to indicate that in certain cases rights which are expressed in the covenant and the liberties could be modified



in some way. I suggest it was intended that should be implied in appropriate cases.

Mr. MARQUIS: The declaration is prepared for people who are ready to live in peace, and are supposed to live always in peace.

The CHAIRMAN: I must say I find it harder and harder to understand the true nature of this declaration. What Mr. Henry has said is that this is a statement of ideals. It is not to be interpreted as binding. It is just something to aim at, something that it would be nice to do if you find that you can do it.

The WITNESS: That brings one almost to a cynical conclusion. I do not think that is quite intended. All the nations which have replied, in general, seem to recognize there is a moral obligation to carry out the provisions of the declaration once it is adopted. That seems to run fairly clearly throughout all the comments, especially throughout the comments of the great powers. It is not merely an idle document, but something which is intended to be morally binding and over which each nation will exercise its conscience when it comes up against some provision in its laws which seems to conflict with this declaration.

*By the Chairman:*

Q. What I should like to know is this—we shall not consider the espionage trials which were controversial, but let us consider something which is not controversial, the defence of Canada regulations. If Canada voted for the adoption of article 5 in the United Nations would we not be charged with inconsistency if a war broke out in two years time and we started to do what we did during the last war? Would it not be said, you cannot do that; you are to have trials promptly. You cannot get away from it. You did not say anything about war or emergency in your declaration. You just said everybody shall have the right to a trial, shall have the right to immediate judicial determination within a reasonable time or to release. This would mean that those people who were put in internment camps would have to be tried and you would have a lot of publicity which would be prejudicial to the war effort.

Mr. PROBE: In the case of internment, is there any short-cut procedure of an expeditious nature to resolve the validity of the detention?

The CHAIRMAN: I was not in the Department of Justice at the time, but I think during the last war competent committees, usually with a judge on them, went around the internment camps to hear the stories of these men. These committees advised the Minister of Justice whether they thought the men were unjustly detained.

Mr. PROBE: That would be due process of law?

The CHAIRMAN: It is certainly not a trial.

Mr. WHITMAN: Were these men not tried first before they were put into the internment camp?

The CHAIRMAN: No.

Mr. WHITMAN: Do you mean the mayor of Montreal, for instance, went to the camp without a trial? Was there not some kind of a trial?

The CHAIRMAN: No, I remember the day it happened.

*By Mr. Marquis:*

Q. If the covenant is adopted, will the declaration be binding? Will the articles in the declaration be binding on the same basis as the covenant or will they become part of the covenant? As the chairman says, this article goes rather far if it is not part of the covenant. Perhaps it is not the same thing? —A. No, sir; the covenant and the declaration will always remain two separate things. I believe it has been suggested that the declaration be embodied in the covenant as a preamble and, at the same time, be kept separate as a declaration.



The same article four in the covenant to which we referred allows the state, under the legal obligation of implementing the covenant, what I interpret as the right to derogate from these obligations. It seems to me to indicate it is intended there shall be some derogation from the provisions of the declaration in cases of great national emergency, not because there is anything expressly in the declaration which says that, but if a nation enters the declaration and the covenant, the covenant is the binding instrument. There, in express terms, protection is given in those cases of national emergency to depart from the express provisions. If the covenant is the legal, binding instrument, surely, a fortiori, the declaration is the less binding and can be departed from in a proper case.

*By the Chairman:*

Q. Why should it not be expressed in the same way as the covenant, then?

—A. Perhaps it should. I would think that would probably be a reasonable idea except for this; once, in a general statement of principles, you begin to say there are exceptions, you do appear to destroy the declaratory nature of the document.

Q. You just tell the truth, that is all.

Mr. PROBE: One is the ideal and the second is the sort of business application.

*By Mr. Marquis:*

Q. Mr. Henry, do you not think the government of each country should have the right to declare what is in the public interest, and to have some kind of reservation, some list of exceptions? According to this article, the government has not the right to declare it is in the public interest to adopt special emergency measures to protect the country. Suppose there were a conspiracy to overthrow the government. We would have to take those people before a judge and we would not have time to make any investigation?—A. Of course, that might be argued but I do think it is intended that in a case of that kind, assuming that you are bound by the covenant, it is intended that you take appropriate action under article IV of the covenant and derogate from those liberties and those rights, notwithstanding it is not mentioned in the declaration. The covenant is the legal and binding instrument, whereas the declaration merely declares in general what are the rights of the individual.

*By Mr. Hazen:*

Q. Could we adopt the declaration and not the covenant? In that case, should there not be something in here, as the chairman suggests? It may happen that we finally agree on the declaration of human rights and the covenant may never be agreed upon. In any case, it seems to me there should be some qualification.

The CHAIRMAN: I find it difficult to understand the effect of subscribing to the declaration. It is subject to unexpressed exceptions for the reason that, if we express the exceptions we destroy the resounding effect of the declaration. I do not think that is a very good reason.

The WITNESS: I would think, probably, that is the main reason which has been advanced for not having such a clause in there. I see no reason, apart from that, for not including one.

The CHAIRMAN: There is no doubt that is a great article, that is a great principle. It is a principle which has evolved through centuries of experience. People are entitled to a trial and they should be protected against arbitrary arrest and arbitrary detention. There is no doubt about that. It is the principle of habeas corpus, Magna Carta, the petition of rights and the bill of rights. It is a great principle.

Mr. HANSELL: Essentially, though, we have never broken the principle.



The CHAIRMAN: We are charged with breaking it in the defence of Canada regulations to some extent and, certainly, in the procedure followed in the espionage cases.

Mr. HANSELL: There was nothing else which could have been done under the circumstances.

The CHAIRMAN: That is what we say.

Mr. HANSELL: That is true. I was on the defence of Canada regulations committee during the war. War broke out and the state had to be protected. Things were done which were considered to be in the best interest of the state. Yet, we had delegations appearing before that committee asking for similar things as those contained in this declaration. The same people, I might say, in some respects that are clamouring for a bill of rights now appeared then. They may have good intentions, but I do not see how we could have acted in any other way; that is my profound conviction.

*By Mr. Herridge:*

Q. I should like to ask Mr. Henry if this is a declaration of human rights which is accepted, more or less with reservations, why is there not some head note or clause to the effect that it is a statement of ideals. It is very confusing to anyone reading it. You take it for granted if a person signs such an instrument, a person assumes he has to live up to it. Why is there not some clause to the effect this is a statement of ideals or an objective to which to work?—A. I think, probably, the reason for that was it was intended that the laws of each state would eventually be brought into conformity with the provisions of this declaration. In fact, it is so stated in the last two articles. The consensus of opinion among all the states is that this is a declaration of ideals. It is intended only to be a declaration.

*By Mr. Marquis:*

Q. Is that declaration supposed to be embodied in the law? If it is embodied in the law of the country, it will become the law of the country?—A. That is correct, sir, but that would depend upon the action taken in modifying the domestic law of the state concerned.

Q. I want to make that point clear. You see, you have a declaration. Suppose Canada adopts this declaration and it is embodied in the text of the law. It will then become the law of the land, if there is no reservation made and if we are obliged to adopt the declaration as it is enacted. I do not know how we can escape under article V?—A. That assumes, of course, that you turn the declaration into a statute which I do not think was the intention.

Q. That is my question; that is the point I raised—A. I do not think that is the intention.

Mr. ZAPLITNY: Is this not the position? If any country were to adopt the ideals expressed in this declaration, they would not be in any one statute. They would find their way into the various statutes of the country in due time. In that way, of course, we are not committed to the wording of the declaration at all. The wording would be in the statutes themselves. It might be quite different, but the principle would be there.

The CHAIRMAN: I think that is correct. Is there any further discussion on article V? If not, we will go to article VI.

The WITNESS: Excuse me, sir, before we go to article VI, would it be worth while telling the committee what happened at Lake Success with respect to article V?



The CHAIRMAN: Yes.

The WITNESS: In the drafting committee, the United Kingdom representative and the representative of China suggested that this article was unnecessary since the question of liberty was already covered in article IV, and that article V dealt not so much with a principle but with the means of securing liberty and should, therefore, properly be placed in the covenant.

The Russian representative suggested that, as the covenant will be the binding instrument on the states which accept it, and whereas the declaration has a broader significance in that it merely imposes a moral obligation, he would oppose the deletion of article V from the declaration. He proposed adding to the article a provision that the right to compensation for illegal arrest or deprivation of liberty be guaranteed. This suggestion, I might say, was defeated later when a vote was taken.

It was suggested by the representative from Chile that there be added the right to humane treatment during the period when one was deprived of liberty. It was considered that was not necessary since it was thought to be covered by article VII.

The net result of the discussion was that articles V, VI and VII, which are inter-related, were referred to a subcommittee for further drafting. These articles are in that position at the moment.

*By Mr. Marquis:*

Q. I think it would be a good suggestion to state in the report that this article should not be embodied in the declaration. It seems to me what is provided in article V concerns only procedure and does not concern principles at all. I think the United States and China made that comment, too?—A. Great Britain and China.

The CHAIRMAN: I take note of what you have said. I think it is a very good article, myself.

*By Mr. Hazen:*

Q. Would it be possible to not deal further with these articles, V, VI and VII, until we hear the result of the re-drafting, or should we have comment on them now? Apparently, they have gone to a committee to be re-drafted.

The CHAIRMAN: I think we might as well plow through them as they are. We may prefer these to the re-drafted versions. They might not be improved in the re-drafting. I think we might go through them all as they are expressed here.

Mr. PROBE: Is it not true that article V, as it stands now, contains the substance of habeas corpus?

The CHAIRMAN: I think that is right.

Mr. PROBE: We recognize article V in Canada?

The WITNESS: That is correct, sir.

Mr. ROBINSON: It is interesting to note that article V is carried into the covenant itself in article IX. In article IX it is stated,

No person shall be deprived of his liberties save—  
There are seven exceptions which are very restricted. They certainly would not cover your comments on the defence of Canada regulations.

The CHAIRMAN: There must be some other clause in the covenant that does?

The WITNESS: Article IV.

Mr. ROBINSON: Article IV only refers to article II.

The WITNESS: Article II in the covenant, I think, was intended to set forth the general principles which the states undertook to accept. I am very much



afraid that the principle of article IV is going to be adopted by states in cases of necessity, whether or not it was intended to be. It is the type of thing you cannot get away from.

Even our own principle of habeas corpus, in times of war in Great Britain which has been the centre of rights of this type, has been abandoned. The principles of habeas corpus have been abandoned in times of war under statute, and proper statutory provisions made for protecting the persons accused. Arbitrary arrests, and so forth, do take place under these exceptional conditions. While it might not be desirable to derogate from these rights, I think the practical answer is that it will have to be recognized.

Mr. MARQUIS: It should be so stated, though.

The CHAIRMAN: Yes, you should be careful to express it in some way.

I think we should continue with article VI, unless there is something else in article V which you wish to discuss. Article VI reads as follows:

Everyone shall have access to independent and impartial tribunals in the determination of any criminal charge against him, and of his rights and obligations. He shall be entitled to a fair hearing of his case and to have the aid of a qualified representative of his own choice, and if he appears in person to have the procedure explained to him in a manner in which he can understand it and to use a language which he can speak.

Are there any comments on that article?

The WITNESS: Yes, sir, the government of South Africa in a comment indicated that no objection is taken to the principle of this article so far as it relates to judicial proceedings. With respect to quasi-judicial authority, it is observed that they must follow the elementary rules of justice apparently laid down in the article. If this is so they must, for example, allow the parties an opportunity of presenting their case, but are not necessarily bound to grant them or the representatives an oral hearing. At least, I understand that is the view taken at the moment in South Africa.

That government says, frequently it is sufficient if they allow the parties to submit written representations. However, if this article by the use of the word "hearing" means it may be interpreted that quasi-judicial tribunals must, in every case, be bound to hear oral representations, there are many changes which have to be made in the laws of South Africa. In some cases, such changes may be found impracticable. The Union government considers there are occasions when the interests of justice require the court should exercise its discretion to hold a trial in camera.

The government of Brazil suggests that, after the last word of the draft article, there be added the words, "And in which he could be understood", to complete the guarantees given to the accused in the matter of expression.

The United Kingdom has furnished a re-draft of the suggested article which, in their view, should read as follows:

Any person is presumed to be innocent until proved guilty. Everyone shall be entitled to a fair hearing. No one shall be subjected to torture or to inhuman indignity.

*By Mr. Hazen:*

Q. Is that article VII?—A. That is article VI. It is suggested that this re-draft replace articles VI and VII, so far as the United Kingdom is concerned. It is suggested that the present wording falls half-way between a declaration and a covenant.

The United States has also furnished a proposed re-draft of article VI which reads as follows:



Everyone is entitled to freedom from conviction or punishment for crime except after a public trial within a reasonable time before a fair, impartial and independent tribunal; and the right to a fair hearing before an impartial and independent tribunal in the determination of any criminal charge against him or of any of his rights or obligations.

There is no comment with that draft. The progress of discussions at Lake Success was covered in the remarks I made with respect to article 5, and you will recall that this article No. 6 was referred to the subcommittee for redrafting, and we have not that redraft back yet.

The CHAIRMAN: The question that will arise here is as to these quasi-judicial tribunals.

Mr. PROBE: What is the meaning of that phrase, in order to understand the South African position there?

The CHAIRMAN: I should like to hear what Mr. Henry says about that. What do you think the South African mean by quasi-judicial tribunals? Let us bring it down to earth. Is a conciliation board a quasi-judicial tribunal?

The WITNESS: I should think that would be included, and possibly a royal commission.

Mr. HAZEN: The decision of a minister of the Crown would be quasi-judicial. He hears the evidence. He is not bound by any principles of law. After he hears the evidence he can form his own judgment. He is not bound by legal principles in coming to the conclusion that he does. That is a quasi-judicial decision. That may not be a very full definition of it, but I think that embodies some of the elements. In judicial proceedings there has to be evidence. Then there is argument, and the consideration of the evidence by the tribunal, and then the application of the law to the facts as they are found. All of those elements are not present in a quasi-judicial proceeding.

Mr. PROBE: Then the liberty of the person is hardly involved in a quasi-judicial proceeding.

Mr. HAZEN: His rights are very much involved. It seems to me that as to this section and section 7 that the comment that has been made applies. I have a note of it here. Article 4 states a principle, but article 5, article 6 and article 7 do not state principles so much as they state methods or means of securing or establishing the principle.

The CHAIRMAN: Yes.

Mr. MARQUIS: That is the point.

Mr. HAZEN: If they were all eliminated I do not think it would affect the declaration on human rights a great deal. There is the principle, and then we go on and say how that principle is to be secured. Is it necessary to set out methods to secure the principle we state in the declaration? I do not think it is.

The CHAIRMAN: It might be better not to put it in the declaration.

Mr. HAZEN: If we do I think we will have to go on and say a good deal more.

Mr. MARQUIS: It has to be repeated in the covenant.

The CHAIRMAN: Yes.

Mr. MARQUIS: So it would be put in the two places.

*By Mr. Herridge:*

Q. Was there any reason for including this statement as to procedures in what is presumed to be a declaration?—A. I think the only reason is that with many democratic states these principles are held to be so fundamental that it was felt they should be set forth in writing in the declaration, but there has



apparently not been unanimity on it because you will notice that the draft declaration suggested by the United States at page 21 of committee document 18 does not have that statement of the procedure. Article 1 is apparently intended to cover the whole field.

The CHAIRMAN: Are there any other comments on article 6 or article 7?

Mr. HAZEN: It seems to me if we are going to state the means of establishing a principle or enforcing it, as these articles seem to do, then we might very well provide that there is a right of appeal from a decision or judgment. There is no provision in any of these articles for a right of appeal. Article 7 refers to offences and crimes, and if we want to be very careful about it you might also provide that the accused or person charged with an offence shall be present in court when the judgment is delivered and entitled to a copy of the judgment that is delivered, the reasons for the judgment. If we are going to go into great detail about these things those are provisions that it should contain. It seems to me in a declaration of human rights we do not want to get into details of that kind.

Mr. MARQUIS: Mr. Chairman, in article 7, paragraph 3 there is one principle. It reads:

No one shall be subjected to torture, or to cruel or inhuman punishment or indignity.

That seems to be a principle. It is not a matter of procedure, but the rest of the article relates to procedural matters rather than to principles.

The CHAIRMAN: It may be worthy of note that the United States representative in putting forward a very much abbreviated declaration of rights did not abbreviate these very much. If you look at article 7 of their abbreviated declaration on page 22 you will see they provide for public trials, assistance of counsel, and so on.

Mr. MARQUIS: Perhaps it would have been better to make it shorter.

The CHAIRMAN: Apart from those things does the committee wish to make any further comments on articles 6 and 7?

Mr. HANSELL: I think paragraph 2 of article 7 is extremely general in the last part of it, "according to the general principles of law recognized by civilized nations." I do not know who is going to interpret that. I suppose every nation thinks itself to be civilized.

The CHAIRMAN: What that paragraph 2 means is that nations may make a wide variety of acts crimes if they wish. If they wish they will not be prevented from making them crimes if they are criminal according to the general principles of law recognized by civilized nations. They may vary from country to country. We make some things crimes that are not recognized as crimes by the general principles of law recognized by civilized nations. I am not at all sure that the provisions of the Lord's Day Act, offences against the Lord's Day, are recognized as criminal according to the general principles of law recognized by civilized nations. I am not sure there, but we make them criminal.

The WITNESS: It is also suggested that the second paragraph may refer to the Nuremberg trials and similar tribunals.

*By the Chairman:*

Q. You have some comments on article 7?—A. Yes.

Q. Let us have those.—A. There are comments from the Netherlands government on article 7. That government indicates that since the article deals with two matters as follows: (1) The protection of the individual against unjust treatment, and (2) the general doctrine that a person shall not be convicted of an offence which was not an offence when the act was committed, that punishment shall not exceed what is imposed by law, and that for a breach of the law a person



shall be tried and punished, that the article should be divided into two separate articles, the first to contain the first proposition, and the other to consist of the remaining propositions. That is purely a mechanical change.

The government of South Africa suggests that there are many statutory qualifications to the presumption referred to in this article. I assume by this the South African government means that some of its legislation contains provisions which modify the principle that every person is presumed to be innocent until proved guilty, and it is not unusual to find such provision in legislation with respect to certain subject matter. It is considered by South Africa that the expression "cruel or inhuman punishment or indignity" is somewhat vague.

The standards of cruelty, inhumanity and dignity vary according to the times, places and circumstances. Any punishment which is clearly excessive, may be said to be cruel and inhuman in relation to the offence committed, and whether or not it is regarded as clearly excessive in a particular community, depends upon the protective needs and the general concepts of justice prevailing in that community.

For example, hanging for petty offences only fairly recently has been considered cruel and inhuman. On the other hand there are many today who regard corporal punishment and solitary confinement for any offence to be too inhuman to be tolerated.

It is pointed out further that the United Nations may quite probably have to deal with mental cruelties. The test of indignity will depend upon national and personal notions, prejudices and susceptibilities. The union government accordingly suggests that the words "or to cruel or inhuman punishment or indignity" should be deleted from the provision, and I assume, as they have referred in their remarks to the covenant where these words appear, that in dealing with the declaration they would take the same view. Their government has not commented directly on the article but has referred us to the provisions of the covenant and their comments thereon which are those which I have just expressed.

*By the Chairman:*

Q. Does not the Bill of Rights of Great Britain in 1688 make some reference to cruel and unusual punishments? Do they not use the term "unusual punishment"?—A. I do not recall offhand whether that is so. I can find out.

Q. It seems to me I remember that it does, that they were confronted with torture and one thing and another by the King, King James II, and they did not like it, and they wrote something in there to stop these cruel and unusual punishments, I believe.

*By Mr. Marquis:*

Q. According to this clause could an accused be sentenced to be whipped? Is it not cruel? There are many crimes which are punished in such a way.—

A. As South Africa has, I think, quite pertinently pointed out that may depend upon the individual outlook of the nations concerned.

The CHAIRMAN: I think it will have to be left at that. This idea of cropping ears, and one thing and another, is out of date. It is out of style, but whipping goes on right along. It is quite a common thing.

Mr. MARQUIS: Many judges say that it is very important in some cases to sentence the accused to that punishment.

The CHAIRMAN: We do not use the pillory any more. That would be a cruel or inhuman punishment in our view, and also mutilations of any kind.

Mr. HERRIDGE: Each nation will place its own views on that.



The CHAIRMAN: They will have to put their own interpretations on those. Are there any other comments on that?

The WITNESS: Yes, sir. The government of Brazil suggests that paragraph 2 should be deleted because it seems to involve an unacceptable derogation of the principle that there is no crime without a statutory provision, but it is also suggested that there might be added a provision that no one can be compelled in any way to refuse responsibility for an act or an omission of which he is accused. The United Kingdom applies the draft which was prepared for article 6 to this article also. Perhaps it would be appropriate if I read it again.

*By Mr. Hazen:*

Q. What exhibit is that?—A. This is committee document 36 at page 4 where you will find the comment about articles 6 and 7. A suggested revised draft of those two articles has been combined. It reads as follows:

Any person is presumed to be innocent until proved guilty. Every one shall be entitled to a fair hearing. No one shall be subjected to torture or to inhuman indignity.

Q. What page is that?—A. That is on page 4 of committee document 36. The United States has also submitted a revised draft of article 7 which reads as follows: "Every one is entitled to the right to be presumed innocent of crime until proved guilty; freedom from ex post facto laws; and freedom from torture or mutilation or cruel or inhuman punishment or indignity". There is no comment with the redraft. At Lake Success, as I have already indicated, this article was referred to the subcommittee to be redrafted, and we have not received it yet.

The CHAIRMAN: Are there any further comments on that before we pass on?

Mr. HAZEN: I should like to make a comment on the first sentence, "Any person is presumed to be innocent until proved guilty". I am very much in favour of that. I think a person should be presumed innocent until he is proved guilty, but that is not the law of the land in this country in a great many cases. Our liquor laws put the onus on the accused. Our Customs Act puts the onus on the accused. I think there was an Act introduced into the House and passed last year—I have forgotten what it was but I know there was a good deal of discussion on it—which put the onus on the accused. The person charged is presumed to be guilty until he proves his own innocence. I hope we adopt this wording as it is, but I must say that it is not the law in this country at the present time.

The CHAIRMAN: In no case does a mere arrest shift the onus.

Mr. HAZEN: Once a man is charged the onus is on him to prove his innocence.

The CHAIRMAN: In what offences?

Mr. HAZEN: In liquor cases. That is so in a good many of the liquor Acts of the different provinces, in certain provisions of the Customs Act, and the Foreign Exchange Control Board Act. That is another case that comes to my mind.

Mr. ROBINSON: The onus does not shift until a prima facie case has been made.

Mr. MARQUIS: There is a prima facie case as soon as he is arrested under the Excise Act.

The CHAIRMAN: I am very much surprised. I do not remember a single case of any kind where mere arrest shifts the onus.

Mr. HAZEN: Not arrest. A man is charged with an offence and he is arrested. He may not be arrested at all. He may be summoned but once he gets into court then he is presumed guilty until he proves his innocence, in too many cases in this country.



The CHAIRMAN: I should like to know a single specific instance where that is the case. I gave some thought to this. I introduced a provision in the Criminal Code shifting the onus. There are dozens of them where the onus is shifted but it is always shifted by something. It is shifted by the possession of property or by the possession of foreign currency or by the possession of drugs, or something which raises a *prima facie* case. Then the onus is shifted to him to prove that he did not have knowledge or he comes within certain exceptions. That is the general pattern of those offences where the onus is shifted. You might imagine a section where, if a person's breath smelled of liquor he is presumed to be intoxicated, but you would never have a section where he was presumed to be intoxicated simply because he was proceeded against. I do not think there are any cases where the onus is shifted merely by the authorities proceeding against a man. I do not think so.

Mr. MARIER: The Liquor Act in the province of Quebec is the same thing. If a fellow is found in possession of a bottle of liquor which is not supposed to be liquor sold by the provincial commission then he has to prove that he obtained that in the proper way.

The CHAIRMAN: That is reasonable; you have to have something in those cases.

Mr. MARIER: There must be a case against him, first.

Mr. MARQUIS: In the case I had, I think there was a matter of possession. When there is a seizure of liquor, under the Quebec Liquor Act, the person accused must be in possession of the liquor. If he has sold liquor, there is a charge against him, but I think the Crown has to produce evidence. The onus is not on the accused. The Crown has to prove he is guilty, unless they have a *corpus delicti* or something seized.

The CHAIRMAN: The Official Secrets Act shifts the onus and it is argued it is shifted too readily under that Act. Mere communication with agents of a foreign power raises the presumption that secrets are being communicated. The fact of communication has first to be established. There is always something there which raises a *prima facie* case before the onus is shifted.

Mr. HAZEN: A *prima facie* case is a case at first view. On first view, you say a man is guilty and he has, then, to prove his innocence.

Mr. HANSELL: Was that not so under the defence of Canada regulations?

The CHAIRMAN: I forget, now.

Mr. HANSELL: I think it was. I think the onus was on the one detained to prove his innocence.

The CHAIRMAN: I would say it would be utterly impossible to have any system of enforceable criminal law if the Crown in every case had to prove every ingredient of the offence.

Mr. HAZEN: In a case of theft or in a case of assault, the Crown has to do that. Look at the criminal code and you will see the Crown has to prove every article of the offence in regard to a great many crimes. A good many of these provisions are to assist the authorities in securing convictions without getting proof.

The CHAIRMAN: I think I could, if I had a list—I had one prepared a while ago—of the instances in the Criminal Code where the onus is shifted. I think I could show it is not a case of trying to save the Crown trouble, it is to save the Crown from discharging an impossible task.

For instance, if the offence is that a man knowingly did something, the Crown cannot prove the state of his mind. All the Crown can prove is some act which indicates that was the state of his mind. Once the Crown has proven that act or certain circumstances, then the burden is on the accused to



prove that he did not perform that act knowingly. In that way, the onus is shifted. It has to be shifted, otherwise the Crown could not get any convictions no matter how diligent it might be.

Mr. MARQUIS: That does not mean that the Crown has to prove the excuse, the fact is proven.

Mr. MARIER: The fact must be proved by the Crown. There is a fact to be proved by the Crown and after the fact is proved then it is for the accused to prove that the fact is not a criminal offence.

Mr. HAZEN: In this article VII, the first sentence would be better worked if it said, "Any person is presumed to be innocent until a *prima facie* case is made out against him."

The CHAIRMAN: It is more accurate. It is less effective. Are there any other comments on article VII? We shall pass on to article VIII which reads as follows:

Slavery, in all its forms, being inconsistent with the dignity of man, shall be prohibited by law.

Are there any comments on that?

The WITNESS: Yes, the comments are very short. The United Kingdom has suggested a more comprehensive text as follows:

Slavery or enforced servitude in any form, being inconsistent—  
and so on. They simply substitute those few words.

The Government of the United States suggests the following draft:

Everyone is entitled to freedom from slavery or forced or compulsory labour.

At Lake Success, the drafting committee has adopted the following wording:

Slavery is prohibited in all its forms.

*By Mr. Whitman:*

Q. Would conscription of man-power in peace-time come under that?—Is not that enforced service by the state?—A. I scarcely think that could be called slavery. I think they are getting at something more fundamental than the requirement for forced labour being carried out. There is something, I think later in the declaration, which deals with that idea. Slavery is something which really goes to property rights.

Perhaps I might read a definition which is to be found in Halsbury's Laws of England which would, perhaps, clarify the point.

Slavery has been defined as service for life for bare necessities, with power in the master over the person and property of the slave. A right to all the acquirements of his labour and a right of alienation, and the like power and right over the slave's descendants.

Perhaps that answers the question.

The CHAIRMAN: I do not think slavery raises any difficulties. Forced labour does, though, I think.

Mr. MARQUIS: Compulsory labour is not slavery. People may be compelled to work but they have their freedom in working; their salaries, their own properties and so on. It is not the same thing at all.

Mr. MARIER: It does not give the right of property to any one.

Mr. HANSELL: I do not like the wording, "in all its forms".

Mr. MARQUIS: I think, at Lake Success, there was a new draft of that article. It was shorter and seemed to be better.



The WITNESS: Yes, there was. I will read it again.  
Slavery is prohibited in all its forms.

Mr. HERRIDGE: Slavery is simply considering the human body as property, really. I think that covers it.

The CHAIRMAN: Yes.

Mr. MILLER: How far has the drafting committee at Lake Success gone? Are they ahead of us or are we ahead of them?

The CHAIRMAN: I think they are ahead of us.

Mr. MILLER: Are we keeping in touch with their changes?

The CHAIRMAN: Yes, Mr. Henry has read some of them to you.

Mr. MILLER: I was wondering if that is what those were.

The WITNESS: That is right. We have all the reports up to today's.

The CHAIRMAN: It might be argued that, in effect, the working of political prisoners almost instituted slavery, not slavery in the sense of the ownership of the individual, but it might also come to that. Where you have large number of political prisoners who are forced to work for long periods of time, so far as they are concerned, they might as well be slaves.

Mr. WHITMAN: The same would be true of imprisonment with hard labour.

The CHAIRMAN: Imprisonment with hard labour might be a little different.

Mr. MARQUIS: They are under the sentence of the law. This applies to free people and not to those who are condemned to imprisonment.

The CHAIRMAN: Shall we take up article IX?

Everyone shall be entitled to protection under the law from unreasonable interference with his occupation, his privacy and his family. His home and correspondence shall be inviolable.

Are there any comments on that?

The WITNESS: Yes, the government of the Netherlands suggested the article should read as follows:

No one shall be subjected to unreasonable interference with his privacy, family, home correspondence or reputation.

The comment is as follows:

In order to enable legal exceptions to the principle of the inviolability of home and correspondence, the first sentence of article III proposed by the United States is to be preferred to the text as proposed by the commission.

The government of South Africa suggests that the article goes too far in declaring home and correspondence inviolable as it would preclude the execution of search warrants and the opening of mail insufficiently addressed in order to return it to the sender.

Mr. HERRIDGE: That is hair-splitting.

The WITNESS: The government of Norway would like to insert a limitation by adding these words:

Except in cases prescribed by law and after due process.

The government of Brazil says that the draft they would suggest is as follows:

Everyone shall be entitled to protection under law, not only from unreasonable interference with, but also from any offence against his reputation, his privacy and his family.

It is considered proper to mention freedom from threats, terror or oppression. The inviolability of the home is subject to restrictions arising out of the necessity for repressing crime, and it should be so stated in the article. The inviol-



ability of correspondence should appear in article XVII which deals with freedom of expression, in the view of the Brazilian government.

The United Kingdom suggests that the inviolability of the family is better included under article XIII and the revision suggested by that government is as follows:

There shall be respect for the sanctity of the home and for the privacy of correspondence. The law shall afford protection for a person's good reputation.

The government of the United States suggests the following draft:

Everyone is entitled to freedom from unreasonable interference with reputation, family, home or correspondence.

Now, at Lake Success, the article was adopted in re-drafted form as follows:

Everyone is entitled to protection—

*By Mr. Hazen:*

Q. Is that one of the exhibits from which you are reading now?—A. No, it is a teletype which has been sent to me.

Everyone is entitled to protection under the law from unreasonable interference with reputation, family, home or correspondence.

Mr. MARQUIS: I believe that is better because, as article IX is drafted now, particularly with regard to the last sentence, a man could kill his wife and the police pass by, hear the cries and are unable to enter. The police would have to wait until the husband called them and said, "I just killed my wife, come in."

Mr. ROBINSON: That is all right, is it not?

The CHAIRMAN: Are there any other comments on that article? It would appear to me the article has been improved.

Mr. HAZEN: I believe the article is superfluous. If we are going to have a short, concise declaration, it may very well be left out. Article IV which provides,

Everyone has the right to life, liberty and security of person—

It seems to me, it covers this sufficiently.

Mr. HANSELL: I should like an elaboration on the words, "interference with his reputation". Does that mean a person is free from criticism? You could hardly criticize a person without reflecting, in some respect, upon his reputation.

Mr. HERRIDGE: You reflect upon his ideas not upon his reputation, if you do it properly.

Mr. HANSELL: You may have something there.

Mr. WHITMAN: I think you do reflect upon his reputation. I remember, sir, when you were Minister of Finance and increased the taxation during the war, I think your reputation was not enhanced by that fact. You had to do those things, but severe criticism was piled upon you. Would there be any way of stopping that criticism under this section?

The CHAIRMAN: No, you could not say that was unreasonable interference with reputation. This would be ordinarily interpreted with reference to the slander and libel laws of the country. A man's reputation cannot be taken away from him except when it is in the public interest or something of that sort.

Mr. MILLER: We seem to get back to that basis every time a point is brought up. We seem to get back to our own laws every time. We may as well have our own laws and be done with it.



The CHAIRMAN: Shall we pass on to article X?

Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in general interest, there shall be liberty of movement and free choice of residence within the border of each state.

Individuals shall have the right to leave their own country and, if they so desire, to acquire the nationality of any country willing to grant it.

Are there any comments on this article?

The WITNESS: Yes, the government of the Netherlands suggests that paragraph 2 of the article, after the word "individuals", there be inserted the words, "who are not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service tax liabilities or voluntarily contracted obligations binding the individual to the government."

The comment of the Netherlands is that an unrestricted right to emigrate is inadvisable. A question may be raised whether a government, in view of an urgent national necessity, may not retain within the borders of the country persons exercising a special profession. It is suggested freedom to emigrate should not be given to persons who have undertaken special obligations to the government which they have not fulfilled. Finally, it is suggested, persons who are lawfully imprisoned should not be allowed to leave the country.

Mexico suggests in paragraph 2 the words, "temporarily or permanently", should be inserted. The paragraph would read,

Individuals shall have the right to leave their own country temporarily or permanently and, if they so desire, to acquire the nationality of any country willing to grant it.

Brazil suggests that the statement of principle in paragraph one is followed immediately by a restriction, while that in paragraph 2 is presented in absolute terms and this restriction appears in article XI of the covenant. It is suggested that reference should be made in the article to the guarantees of the alien against arbitrary expulsion which appears in article XII of the covenant.

Egypt has made a comment by way of pointing out with respect to paragraph 2 some legislation makes it obligatory for nationals who shall acquire foreign nationality to have prior authority from their own government.

The United Kingdom has submitted a re-draft of the opening words which they consider to be inappropriate for a declaration of ideals.

*By Mr. Hazen:*

Q. Are you reading now from one of the exhibits?—A. Not at the moment.

Q. May I suggest, when you read from an exhibit you give us the number of the exhibit and the page so we can look them up afterwards if we so desire? —A. Yes, the material which I have recently read is not yet an exhibit.

The United Kingdom suggests a re-draft in the opening words of the section of article X. It would read,

There shall be liberty of movement and free choice of residence within the borders of each state.

That is to be found in document 36 at page 4.

With respect to paragraph 2, on the same page of the same document, it is suggested that the United Kingdom assumes this means that the individual may divest himself of his nationality if he wishes to do so, but that government sees no need to include the point if the revised draft suggested is adopted.

The government of the United States' comment will be found in a document not yet circulated to the committee including a re-draft of this article. The re-draft reads as follows:



Everyone is entitled to freedom of movement and residence within the borders of each state and freedom to emigrate and to acquire the nationality of any state willing to grant it.

At Lake Success, the article as approved reads as follows:

Everyone is entitled to freedom of movement and residence within the borders of each state.

That is paragraph 1. Paragraph 2 reads as follows:

Everyone has the right to leave any country, including his own.

Mr. HERRIDGE: In that case, what would you do with people who had infectious diseases and who were quarantined?

The CHAIRMAN: That is certainly an exception.

Mr. MILLER: It does not say they can enter any other country. They can leave any country.

Mr. HERRIDGE: The first clause says they shall have freedom of movement in this country.

*By the Chairman:*

Q. Is this article directed against segregation laws and regulations saying that negroes, for example, shall live in a certain district in a city and in no other district?—A. I think, in part, that would be correct. The other thought which occurs to me is that there have been reports of some people not being permitted to emigrate from Russian influenced territory. Possibly it was something of that nature which was also in mind.

*By Mr. Zaplitny:*

Q. On that point, is there a comment from Russia?—A. There is no comment from the Russian government, sir, as such. I could read to you the comments of the Russian representative at the United Nations, if that would be helpful.

Mr. Pavlov, the Russian representative, thought that in paragraph 2 of article X, the obligation of an individual to his state is not mentioned. Neglect of such obligations, he said, led to Quislings, Petains, etcetera. Elements which would encourage people to neglect their obligations to their state he said, were implied in the present wording of the article. He proposed therefore the following amendment to paragraph 2,

Individuals shall have the right to leave their own country in accordance with the established laws of that country.

Mr. Pavlov further indicated that the question of Emigration was entirely a question of domestic concern. He was not prepared to listen to any sermons, nor tolerate any intervention in the internal affairs of the Soviet Union.

Mr. ZAPLITNY: If that attitude is carried through, it makes this entirely inoperative, of course.

The CHAIRMAN: Oh, yes. The committee dropped paragraph 2 altogether, did it not?

The WITNESS: Yes, the final approved paragraph 2 was:

Everyone has a right to leave any country, including his own.

That was adopted by the committee and it excludes the proposal of the Russian delegate.

The CHAIRMAN: Well, might it not be necessary for Canada to prevent doctors or trained nurses, or something like that, from emigrating to the United States if we had a terrible demand for them? Suppose our people were suffering, might not such a policy be necessary under certain circumstances?

Mr. HAZEN: That raises the whole question of human rights.



The CHAIRMAN: Do countries not do that right along and say certain classes of people cannot emigrate because they are needed at home?

Mr. HAZEN: Yes, but it still raises the whole question of human rights.

Mr. ZAPLITNY: Except in a case of extreme emergency such as a war or some national disaster, I would think if we believe in human rights and the things we are discussing it would be incongruous to suggest any nation or state should have a right to retain an individual who wishes to go somewhere else because that immediately establishes the supremacy of the state over the individual to which we, as a general principle, all object. If we allow any wedge to get in there at all and to say that, in peace-time or under ordinary circumstances, a state shall have the right to retain its individuals, then it makes the whole article meaningless. If we are going to accept the principle of free movement internationally, then it will have to be all in one piece.

Mr. HANSELL: It does protect internationally and it does protect freedom within our own country. You deny freedom of movement right now by raising the restrictions on currency. How could a person go into the United States? A person could go there, but would have to come back again as soon as his money ran out.

Mr. HAZEN: That is one suggestion, in connection with paragraph 2, that anyone should have the right to leave any country, including his own. I think those are the words that are there. I believe they should have added the words, "And take with him what belongs to him", or "and take his personal property with him". Unless the state is going to override the freedom of the individual, he should also take with him what he owns when he moves.

The CHAIRMAN: What about when he goes on a visit?

Mr. HERRIDGE: I think every state would consider its own interests first at such a time. If we had a great flight of capital from Canada, the state would take action to stop it.

Mr. MILLER: I think the question has been raised before, and we do not want to get away from the procedure you have laid down, but are we going to have somebody give us an opinion as to just where our laws and this declaration, if it is finally adopted, are going to dovetail or where they are going to be in conflict? If they are in conflict and if this declaration is finally adopted, is it going to overrule our laws? That is what is confusing me. As a Canadian, I do not want to see the United Nations making laws for our country. I want us to have the right to make our own laws; that is what is beclouding me at every meeting.

The CHAIRMAN: I think before you came in I did say it was becoming harder and harder for me to know how far the moral obligation to carry these principles into our legislation went. If it were to be accepted as a fairly binding moral obligation, then nearly all these articles would require lists of exceptions, it appears. The more we discuss them, the more exceptions to the statements made in this article occur to one's mind.

Mr. HANSELL: I think this second paragraph is nearly impossible.

The CHAIRMAN: It is just about six o'clock. I am advised that there are four committees meeting tomorrow afternoon. Shall we attempt to get a quorum tomorrow afternoon? The Senators are all away and we have to get our quorum entirely from the House of Commons. We are not going to get through this declaration if we are not careful. I do not know of any other way of going about it, however, other than going through the declaration.

Mr. HERRIDGE: Points are brought out and we see all the difficulties.

The CHAIRMAN: Perhaps it would be better if we adjourned the meeting to the call of the chair. I will do the best I can.

The committee adjourned to the call of the chair.























